

Internal Revenue Service

Department of the Treasury

District
Director

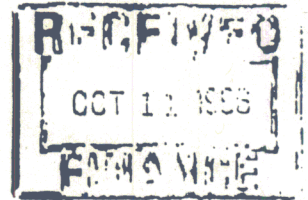
1100 Commerce St., Dallas, Texas 75242

Date: OCT 07 1998

Employer ID Number:

Person to Contact:

Telephone Number:



Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates you were incorporated on [REDACTED]. The principal purpose specified in your articles of amendment, which were filed on [REDACTED] with the Secretary of State, are:

"To lessen the burdens of Government by promoting and developing alternate dispute resolution systems through educational programs, training, publication and similar activities. To assist in achieving this purpose, the corporation will coordinate the resolution of commercial disputes between private parties by providing a neutral forum, and the required related physical facilities and services, to parties who wish to resolve disputes without resorting to litigation. The corporation will coordinate the resolution of such disputes by applying the rules of conciliation, mediation and arbitration of other recognized institutions or by applying similar rules promulgated by the corporation. The corporation may also train individuals to enable those individuals to better serve as mediators and arbitrators of disputes."

In your application, you state that you provide facilities and administrative and support services to individuals, companies, and other entities using mediation; provide resumes of qualified mediators to those who request mediation services; cosponsor events about mediation activities at least once a year, depending on the availability of funds; hold informational symposiums on mediation once a year in the United States, Mexico, and Canada; and conduct one-day training sessions, in the second day of your informational symposiums, for individuals who are qualified to be mediators.

In your brochure, [REDACTED] you state that your purpose is to provide a mediation and conciliation program. You encourage businesses to include mediation and other alternative methods in domestic and international business agreements. You can be contractually designated as the administering agency in dispute resolution clauses of private parties. You offer full administrative and support services to parties who wish to resolve disputes through mediation or other alternative dispute resolution techniques.

You charge disputants from \$[REDACTED] to \$[REDACTED] for each case you administer. In addition, disputing parties are charged for using hearing rooms, translation service, transcript service, catering service, and any other expenses incurred by them. You also charge mediators [REDACTED] % of their compensation received from the disputants. In order for mediators and attorneys to be listed in your registry, they have to pay you an annual fee of \$[REDACTED].

In your letter dated [REDACTED], you state that one of your main objectives is to facilitate the resolution of international commercial disputes among private parties within the United States, Canada and Mexico by avoiding costly, protracted court proceedings. For promotional purposes, you will utilize internet and direct mailings through local chambers of commerce, law firms and institutions. Your prospective clients will be private parties involved in international commercial disputes.

Your business hours are from 8:30 a.m. to 5:30 p.m., Monday through Friday. You state that you will extend your daily hours to accommodate disputing parties who seek your services.

Your major operating expenses are personnel. The duties of your paid staff will include marketing your services, coordinating and administering support services for dispute resolution proceedings, providing mediator referral service, and disseminating information regarding your work through conferences, workshops and symposiums.

You indicate that you may award scholarships for training of individuals as mediators and other dispute resolution experts. However, details such as eligibility requirements, selection procedures, amounts of awards, etc., have not been determined as [REDACTED].

Your anticipated sources of support are contributions and unrelated business income. You state that the revenue sources shown as unrelated business income are fees for services rendered.

In a letter dated [REDACTED], your chairman states that you are soliciting financial support for the initial three years because you plan to be self-supporting in three years. He also states that your activities, bringing disputing parties in [REDACTED], will provide a cost benefit to corporations in resolving disputes.

You state that you lessen the burdens of government because you promote and develop alternate dispute resolution systems and your activities enable private parties to resolve their disputes without court actions. You provide opportunities for small and medium businesses to resolve their commercial disputes in a cost effective manner.

Your basis for exemption is that other organizations have already initiated mediation services; and that a government grant was given to a state university for the United States and Mexico conflict resolution study.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or

Prior to the formation of the organization, the court paid attorneys to serve as guardians ad litem representing the neglected or abused children in court proceedings. The ruling states that the approval of an organization and its activities by a government official is not sufficient to establish that the organization is lessening the burdens of government. Therefore, in addition to the criteria set forth in Revenue Ruling 85-1, ruling 85-2 also considers the interrelationship between the organization and the government. A favorable working relationship between the organization and the government is strong evidence that the organization is actually lessening the burdens of the government.

In Revenue Ruling 72-369, 1972-2 C.B. 245, a nonprofit organization formed to provide managerial and consulting services at cost to other exempt entities, is held not to be exempt under section 501(c)(3) of the Code. The ruling states that providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services are provided at cost and solely for tax exempt entities is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3).

In Revenue Ruling 61-170, 1961-1 C.B. 112, an organization which maintains a register primarily for the employment of its member nurses, is held not exempt under section 501(c)(3) of the Code. The ruling states that the organization was promoting the private interests of individual nurses.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), petitioner was held not exempt from federal taxes as a corporation organized and operated exclusively for scientific or educational purposes. Petitioner contended that its activities are directed toward the education of businessmen and the general public. The court held that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes. The court held that in order for petitioner to fall within the claimed exemption, it must be devoted to educational purposes exclusively. Since petitioner promoted an ethical as well as a business community, it was not entitled to be exempt from taxation under the Act in favor of religious, charitable, and educational organizations.

In applying the operational test on the basis of the information you supplied, the provision of administrative and support services to disputing parties is your primary activity. Such services are provided on a regular basis, and will be extended beyond your business hours to accommodate the mediation sessions of your clients. You also provide mediator referral service by maintaining a register of mediators and attorneys on a regular basis. The marketing and provision of your services are handled by your regular full-time paid staff. Your printed materials, including the brochures and solicitation letters, are emphasizing the services available by you and the advantages of resolving commercial disputes through mediation.

On the other hand, you only schedule a one-day training session in the annual informational symposiums held in the United States, Canada and Mexico. You do not hold seminars, workshops, technical conferences, forums, discussions, or similar activities on a regular basis. You are not primarily formed to conduct research activities and release the results of your research to the public.

It appears that the informational symposiums and the events dealing with mediation activities will not be exclusively educational. They might be informative to those who plan to seek resolutions through alternatives other than court proceedings. However, these activities appear to encourage the public to use mediation proceedings and your support services. Your symposiums along with the training sessions cannot be deemed a substantial part of your activities. They are incidental to the administrative and support services you provide.

Therefore, you are not an educational organization described in section 501(c)(3) because you are not operated exclusively for educational purposes. You are primarily engaged in a business of providing mediation support services, which is not principally designed to improve or develop your clients' capabilities through instructions or training.

Your primary activity is not exclusively in furtherance of charitable or other exempt purposes specified in section 501(c)(3) of the Code. Your provision of administrative and support services to business enterprises that choose to resolve commercial disputes through mediation or other alternative proceedings does not constitute "lessening the burdens of Government" within the meaning of section 1.501(c)(3)-1(d)(2) of the Regulations.

First of all, you are not performing a governmental function on behalf of one or more governmental units. There is no statute authorizing the provision of government funding to assist private enterprises to resolve their commercial disputes through litigation, mediation, or other alternative proceedings.

Second, a governmental burden does not exist in the type of activities you conduct. If you did not exist, the government would not have to provide administrative and support services to private enterprises seeking resolutions of commercial disputes through alternative proceedings other than the court.

If the government is not authorized to fund mediation activities or to provide administrative and support services to business enterprises using mediation, your activities are not considered to be a government's burden. You are not actually lessening the burdens of the government.

The nature of your activities can be distinguished from the nature of the activities described in Revenue Rulings 85-1 and 85-2, supra. The activities of the organizations described in these rulings exclusively benefit the governmental units. Your activities benefit business enterprises seeking resolution of commercial disputes in a cost effective manner.

You are not supported in part by government grants. Your staff and your operations are directed and governed by a board comprised of attorneys and businessmen who are not appointed or elected by the government. The control is not vested in public authority or authorities. Your activities were not previously undertaken by the government. No favorable working relationship between you and the government is in existence. Your administrative and support services are not the type of projects or activities assumed by the federal, state, or local government.

Your claim of lessening the burdens of government does not appear to be valid.

The fact that funding was provided to a state university for a study of conflict resolution does not mean that your administrative and support services are lessening the burdens of government. Nor does it mean that a governmental unit considers your activities to be its burden. Further, as stated in Revenue Ruling 85-2, *supra*, the fact that a government official expresses approval of an organization and its activities is not sufficient to establish that the organization is lessening the burdens of the government.

In light of the above, we conclude that your administrative and support services cannot be deemed as the type of activities that lessen the burdens of government. Since the services you provide constitute your primary activity, and they do not benefit a governmental unit or a distinct charitable class, you are not operated exclusively for charitable purposes.

You are engaged in a business of providing mediation support services even though you are organized on a nonprofit basis. Your administrative and support services are provided to those who can afford your charges. You plan to be self-supporting without solicitations of financial support upon the first three years of your operations. As stated in Revenue Ruling 72-389, *supra*, to provide services for a fee at cost is not an exempt activity under section 501(c)(3) of the Code. This principle would not change merely because you provide mediation and related services to for-profit enterprises, as distinguished from organizations which provide consulting services to exempt organizations.

The services you provide may be beneficial to the private enterprises and are undertaken on a nonprofit basis. However, they cannot be regarded as a type of activity which furthers charitable, educational, or other exempt purposes specified in section 501(c)(3) of the Code. You are facilitating commercial disputes among private parties rather than lessening the burdens of government or improving individuals' capabilities through a training program.

In comparing the annual one-day training sessions following the first day of your informational symposiums held in the United States, Canada and Mexico, with the administrative and support services provided on a regular basis, the provision of your administrative and support services is substantial in nature. As indicated in BetterBusiness Bureau v. U.S., *supra*, the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes. Since you provide mediator support service on a regular basis, and the provision of these service constitutes a substantial part of your overall activities, you are not operated exclusively for one or more exempt purposes despite the presence of your annual one-day training sessions and a potential scholarship program.

In addition, it appears that your mediator referral service is not a type of activity that furthers one or more exempt purposes. You charge mediators a fee for maintaining their data in your registry. This service serves the private interests of the mediators even though it is not your primary activity. See Revenue Ruling 61-170, *supra*.

Also, you do not meet the organizational test of section 501(c)(3) because your principal purpose is to provide mediation support services for those who wish to resolve commercial disputes through conciliation, mediation and arbitration. These activities are not consistent with the purposes and activities of an organization described in section 501(c)(3) even though your articles have

specified that you will not engage in any activity which would result in the loss of your exempt status. Therefore, you do not meet the organizational test requirements. See section 1.501(c)(3)-1(b)(1) of the Regulations, supra.

Accordingly, we conclude that you do not qualify for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code because you are not organized and operated exclusively for charitable, educational, or other exempt purposes. Contributions made to you are not tax deductible. You are required to file federal income tax returns on Form 1120 reporting the amounts of your taxable income and tax due.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible. You should also file the enclosed Federal income tax return(s) within 30 days with the Chief, Employee Plan/Exempt Organization Division 1100 Commerce, Dallas, Texas 75242.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,



Bobby E. Scott
District Director

Enclosures:
Publication 892
Form 6018